

ORDINANCE NO. 120 -2010

AN ORDINANCE AMENDING SECTION 16-4 OF THE CODE OF ORDINANCES TO PROVIDE THAT DUMPSTER COLLECTION SERVICE WILL BE PROVIDED AS DESCRIBED IN THE DIVISION OF WASTE MANAGEMENT'S DUMPSTER SERVICE GUIDE AND SUBJECT TO THE APPROVAL OF THE COMMISSIONER OF ENVIRONMENTAL QUALITY, THAT THE DIRECTOR OF WASTE MANAGEMENT MAY EXEMPT PROPERTIES WITH INSUFFICIENT SPACE OR SPECIAL CIRCUMSTANCES, THAT PROPERTIES OTHERWISE SUBJECT TO DUMPSTER REQUIREMENTS MAY BE APPROVED FOR ROLLCART SERVICE PROVIDED THEY ARE IN COMPLIANCE WITH SECTION 16-4.1(a)(3) AND (4) AND WASTE GENERATION DOES NOT REQUIRE DUMPSTER SERVICE, AND THAT THE PROPERTY MUST CHANGE TO DUMPSTER SERVICE IF WASTE GENERATION INCREASES; AMENDING SECTION 16-4.1(a)(4) OF THE CODE OF ORDINANCES TO CLARIFY REQUIREMENTS FOR DUMPSTER CONCRETE PADS; AMENDING SECTION 16-6(d) OF THE CODE OF ORDINANCES TO PROVIDE THAT THE DIRECTOR OF WASTE MANAGEMENT MAY DESIGNATE THE LOCATION FOR PLACEMENT OF ROLL CARTS; AMENDING SECTION 16-8(d) TO PROVIDE THAT IMPROPERLY PREPARED REFUSE MUST BE ABATED WITHIN FORTY-EIGHT (48) HOURS UNLESS THE VIOLATION CONSTITUTES AN IMMEDIATE DANGER WHEN THE URBAN COUNTY GOVERNMENT WILL ISSUE A CITATION AND IMMEDIATELY ABATE THE CONDITION AND BILL THE PROPERTY OWNER; AMENDING SECTION 16-10 TO CHANGE THE COMMISSIONER OF PUBLIC WORKS TO THE COMMISSIONER OF ENVIRONMENTAL QUALITY, TO PROVIDE THAT ROLL CARTS SHALL BE PLACED IN FRONT OF THE RESIDENCE, THAT CONTAINERS SHALL BE PLACED AT THE CURB BETWEEN 4 P.M. ON THE EVENING BEFORE COLLECTION AND 5 A.M. ON THE DAY OF COLLECTION AND SHALL BE REMOVED BY 7 P.M. ON THE DAY OF COLLECTION, THAT CONTAINERS WILL BE KEPT IN THE REAR YARD OR IN THE SIDE YARD WHEN NOT AT THE CURB FOR COLLECTION, THAT CIVIL FINES MAY BE ASSESSED FOR CONTINUING ROLL CART VIOLATIONS, AND TO PROVIDE THAT PROPERTY OWNERS MAY PROVIDE SPECIFIED MANAGEMENT COMPANY OR DESIGNATED REPRESENTATIVE INFORMATION TO THE DIRECTOR OF WASTE MANAGEMENT.

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BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Section 16-4 of the Code of Ordinances be and hereby is amended to read as follows:

- (a) The urban county government will provide collection service for dumpster containers as described in the division of waste management Dumpster Service Guide at any multifamily residential structure, office, commercial and industrial unit, or other building within the full urban services district or a partial urban services district which provides for refuse collection, upon request, subject to the approval of the commissioner of environmental quality.
- (b) Dumpster containers will be required to be furnished at the expense of the owner and shall meet the screening requirements contained in Section 16-4.1 at the following locations:
  - (1) Apartment buildings, townhouses or condominiums of seven (7) units or larger.
  - (2) All office, commercial and industrial units or other buildings, including apartment complexes, townhouse complexes and condominium complexes, which, as determined by the commissioner of environmental quality generate a sufficient amount of refuse to warrant the use of a dumpster (approximately eight (8) cubic yards per any

collection day or three (3) or more roll cart containers of refuse normally).

(3) Exempt from this requirement are existing apartment buildings, office, commercial and industrial units or other buildings which the director of waste management determines either do not have sufficient space to properly locate a dumpster or have special circumstances which make the use of a dumpster at that location wholly impracticable. Existing properties which have sufficient space but do not have dumpster collection may be ordered to change type of service and comply with Section 16-4.1(a)(4) by the commissioner of environmental quality within one hundred twenty (120) days of formal written notice. Failure to comply with the order to change service will result in enforcement action pursuant to article XII.

(4) Properties otherwise subject to subsections (1) and (2) may be approved by the director of waste management for rollcart service upon request, provided the property is in compliance with section 16-4.1(a)(3) and (4) and waste generation from the property is not sufficient to require dumpster service. Should waste generation at the property increase so that rollcart service is not sufficient the property shall be required to change to dumpster service as provided in subsections (1) and (2) and the Dumpster Service Guide.

(5) Where rollcart containers are permitted pursuant to subsection (3) or (4), the urban county government shall make a maximum of two (2) collections per week from each exempted establishment.

(c) The urban county government may provide an additional dumpster collection service for the separate collection of recyclable materials to any property receiving dumpster collection service. Recycling dumpster containers must be furnished at the expense of the owner in accordance with subsection (b) above.

(d) The director, division of waste management shall have the authority to designate the location for collection with consideration for such factors as: ease of accessibility, convenience for customers; hazardous conditions such as cables, utility poles, equipment clearance, animals; and collection costs.

Section 2 – That Section 16-4.1 of the Code of Ordinances be and hereby is amended to read as follows:

Dumpster screening requirements; requirements for obtaining permit; location and maintenance of dumpsters.

(a) All dumpsters shall be screened except when located in any B-4, I-1 or I-2 zone. Dumpsters in the B-4, I-1 and I-2 zones shall be screened when located within one hundred (100) feet of any zone except B-4, I-1 or I-2. Existing properties with dumpsters located in these zones and which are not screened may be required to be screened within one hundred twenty (120) days of formal written notice by the director of the division of waste management. The screening requirements shall be as follows:

(1) The dumpster area must be screened on three (3) sides using material consisting of stone, brick, concrete block, wood or a continuous planting of evergreens. Screens of stone, brick, concrete block or wood shall have eighty (80) percent opacity (80% solid); evergreen plantings shall be placed two (2) per side on three (3) sides and be six and one-half (6 1/2) feet tall and one and three-quarter (1 3/4) inches in diameter at installation. Whenever evergreens are

used as screening material, they shall be promptly replaced if and when they should die.

(2) The average height of screening material shall be one (1) foot more than the height of the dumpster but when walls or fences are used, shall not exceed eight (8) feet in height.

(3) The opening for removal of the dumpster for collection must be a minimum of twelve (12) feet in width (for each additional dumpster, add ten (10) feet) and when doors are provided, some means of retaining the door in an open position while servicing must be provided.

(4) A concrete pad sufficient to support the dumpster and the front wheels of the dumpster collection vehicle shall be required where the existing foundation, as determined by the director of the division of waste management, is not adequate to support the dumpster and the collection vehicle and bollards shall be installed which are sufficient to protect any adjacent structure(s) and allow access to the dumpster.

(b) No dumpster or screening as required above, regardless of whether collection service will be provided by the urban county government or by private hauler, shall be permanently placed or constructed upon any site without first obtaining a permit from the director of the division of waste management.

(1) In order to obtain such permit, an application accompanied by a plat of the property on which the dumpster and screening is to be located, drawn to scale and showing the location of all structures, public rights-of-way, and the location of the proposed dumpster and all required screening, shall be submitted to the director of the division of waste management. The plat shall contain a statement that it is a true and accurate depiction of the site shown thereon and be signed by the owner or person who has charge, care of control of the premises. A fee in the amount of twenty-five dollars (\$25.00) shall be paid to the director of the division of waste management prior to issuance of any dumpster and screening permit except as provided in subsection 16-4.1(b)(3).

(2) Any dumpster or screening placed or constructed without a permit as required by this subsection shall be removed within forty-eight (48) hours of notice to the person responsible for placement of the dumpster or screening unless a permit is immediately obtained as provided in subsection 16-4.1(b)(3). The notice shall state that a civil citation may be issued if two (2) or more notices to remove unpermitted dumpsters or screening have been issued to the same person within any twelve-month period notwithstanding whether a permit was obtained after the prior notices.

(3) A permit may be granted for a dumpster or screening which was placed without a permit upon compliance with the requirements of this section and payment of a fee in the amount of one hundred dollars (\$100.00) to the director of waste management prior to issuance of the permit.

(c) No dumpster shall be located closer than ten (10) feet to any abutting residential property line. No dumpster shall be located in such a manner that the unscreened side shall be visible from any public right-of-way. Whenever, in the opinion of the director of the division of waste management, a dumpster and/or the screen cannot be located upon a particular side so as to conform with these requirements, or there are special circumstances which make the requirements wholly impracticable, the director may designate a location for the dumpster which in his discretion is the most

accessible and aesthetically appropriate or make exemptions from the requirements as necessary.

(d) All dumpsters, regardless of whether collection service will be provided by the urban county government or by private hauler, shall be maintained in a safe and sanitary condition and shall be cleaned by the owner/occupant of the dumpster site as often as necessary to prevent the dumpster from becoming malodorous. Litter and debris shall not be allowed to accumulate around the dumpster, and all refuse shall be deposited in such manner as to prevent it from blowing out of the dumpster.

(e) No special handling waste, hazardous waste, medical waste, paints, solvents, flammable liquids or hot ashes shall be placed in any dumpster for which the urban county government provides collection service. The commissioner of environmental quality, upon consultation with the director of the division of waste management, is hereby authorized to promulgate further regulations regarding dumpsters in order to provide standards for the location and maintenance of not in conflict with this section.

(f) No properly permitted dumpster, regardless of whether collection service is provided by the urban county government or by private hauler, shall be removed from any site unless the division of waste management has been notified at least forty-eight (48) hours before the dumpster is removed. Failure to provide notice may result in the issuance of a civil citation.

(g) Any person who fails to perform the duties required of him by the provisions of this section or who shall cause a dumpster to be located, maintained or filled in violation of this section shall, for every offense not abated within forty-eight (48) hours following notice to the person responsible for payment of the solid waste disposal fee for the dumpster, be subject to the penalty provisions in article XII and each day's continuance of any such violation shall be a separate offense. The urban county government may choose to abate the condition in accordance with section 16-8. In addition to the above remedies, where collection would pose a safety or health threat or may damage collection equipment, service may be suspended by the government when prohibited material or items are placed in the dumpster, until such time as the prohibited material is removed.

Section 3 – That Section 16-6 of the Code of Ordinances be and hereby is amended to read as follows:

Refuse collection procedures.

(a) It shall be the duty of owners, proprietors, occupants or persons in charge of every dwelling house, office, commercial and industrial unit or other building in the urban county to place or cause to be placed all garbage and trash accumulating on the premises in regulation roll cart containers provided by the urban county government. Exceptions include residents who have received a medical exemption, units having dumpster collection, residences or buildings where roll carts are not feasible for collection and those units serviced privately. The container provided by the government shall be rolled to the curb by residents, owners or occupants on their regularly scheduled collection day. Both garbage and trash may be placed in the roll cart container. No person shall block access to or cause access to be blocked to a roll cart container that has been placed for collection at the curb.

(b) It shall be the duty of owners, proprietors, occupants and persons in charge or control of, and using, any place or premises in the urban county fronting on a street, alley or other public right-of-

way to maintain the portion of the street, alley or other public right-of-way adjacent to the place or premises in a condition free from solid waste. For the purposes of this section, the portion of a street, alley or other public right-of-way adjacent to a place or premises includes any walkway, trail, sidewalk, parkway, curb and gutter, and the travel lane portion of the roadway on the side of the street or alley adjoining the property.

(c) Anything left or placed within a three-foot radius of any refuse container shall be deemed as placed or left there for collection, and the urban county government and its employees shall not be liable for the removal thereof; however, improper preparation or placement of items for collection shall be subject to the abatement process set forth in section 16-8(d).

(d) The director, division of waste management, shall have the authority to designate the location for collection with consideration for such factors as: ease of accessibility, convenience for residents; hazardous conditions such as cables, utility poles, equipment clearance, animals; and collection costs.

Section 4 – That Section 16-8 of the Code of Ordinances be and hereby is amended to read as follows:

(a) It will be the responsibility of the property owners and/or occupant(s) of said property to keep the roll cart container provided by the urban county government reasonably secure and in good condition. If the urban county government container needs replacement due to normal wear and tear or because of some manufacturer's defect, a new container will be provided or repairs will be made at no charge. The urban county government will replace stolen or vandalized containers unless the urban county government determines that the property owner and/or occupant(s) clearly has been negligent in the care of his container. If so, the property owner and/or occupant(s) may be required to purchase replacement containers.

(b) The roll cart container may be filled to capacity as long as the lid can be closed and latched. The recommended weight capacity of two hundred (200) pounds shall not be exceeded. Within a cart, garbage and trash shall be contained in disposable plastic bags. The bags shall be leak proof, of sufficient strength to resist tearing under normal handling, and shall be securely tied. No special handling wastes, hazardous wastes, medical waste, bricks, dirt, engine blocks or other excessively heavy material, hot ashes, paints, solvents or flammable liquids shall be placed in the container. Any canine feces (dog excrement) placed in the container must be contained in a securely closed doubled plastic bag.

(c) All establishments that are exempt from using the urban county government roll cart container or establishments that use containers for occasional excess garbage and trash in addition to the one provided by the urban county government will comply with the following regulations. All containers and receptacles must have covers. Regulation garbage containers shall be watertight containers equipped with tight-fitting covers sufficient to keep out water, prevent disturbance by animals and entrance of insects. Containers shall be neither less than five (5) nor more than thirty (30) gallons' capacity. All standard garbage containers shall be equipped with suitable handles by which they may be lifted. Tied plastic bags may be used for occasional excess trash placed at the curb.

(d) Material placed at the curb which does not meet the requirements set forth in this section or material which has not been

properly prepared pursuant to section 16-9(a) or properly prepared and scheduled for special collection pursuant to section 16-14 shall, if not corrected within the time period provided in the notice of violation, be subject to abatement by the urban county government with all costs for such abatement to be billed to the property owner pursuant to the procedures set forth in this article and the property owner shall further be subject to the penalty provisions of article XII.

(e) When refuse is not properly prepared in accordance with this section or section 16-9(a), or properly prepared and scheduled for special collection pursuant to section 16-14, it shall be deemed a nuisance pursuant to KRS 381.770, and a notice of violation shall be affixed to the front door of the residence or structure by the director, division of waste management or his designee, listing the date and time the notice was issued and the defect to be cured before collection is continued and directing the abatement of the defect, either by proper preparation or removal of the refuse from the curb, within forty-eight (48) hours. The time period to abate shall commence upon attachment of the notice. A copy of this notice shall also be mailed, via regular mail, or transmitted by fax to the owner of the property as determined by reference to the records of the property valuation administrator, or to the owner's designee if the owner has filed notice of a designee pursuant to section 16-10(e). This notice shall state that a civil fine pursuant to Article XII may be assessed if the violation continues or two (2) or more notices to abate have been issued to the same owner on the same property within any twelve-month period.

(f) If the violation is not abated following the expiration of the period of time to abate provided for in the notice, the urban county government may abate the condition and bill the property owner for the costs associated with such abatement pursuant to article XII. If a violation constitutes an immediate danger to the health and well being of the community the urban county government shall issue a citation for the violation and immediately abate the condition and bill the property owner for the costs associated with such abatement pursuant to article XII.

(g) The citation shall be served upon the property owner or his section 16-10(e) designee, by personal service or by fax transmission or by regular mail to the last known address of the owner of the property as it appears on the current tax assessment roll or to the owner's designee by personal service or by regular mail or by fax transmission to the designated address.

(h) The urban county government shall have a lien against the property for its costs incurred in abating a nuisance condition pursuant to this article and any civil fines assessed for violations of this article, which shall be enforced as provided in section 16-81 and article XII.

Section 5 – That Section 16-10 of the Code of Ordinances be and hereby is amended to read as follows:

(a) In all areas of residential urban county government collection, garbage service will be provided once each week on the same day of each succeeding week. Collection of recyclable materials and yard waste in approved yard waste containers will be provided once each week on the same day as garbage service. Trash that will not fit in the roll cart container and that is properly prepared pursuant to this article will be collected once per week. When a scheduled refuse collection day falls on an urban county government holiday, refuse will be collected on a makeup collection day. The commissioner of environmental quality retains the right to adjust schedules in response to emergencies or severe weather.

(b) Roll cart containers, receptacles for properly prepared trash, roll cart containers for recyclable materials, approved yard waste containers and any other waste subject to collection by LFUCG be placed at the curb line in front of the residence for collection but shall not remain at the curb line longer than a reasonable time necessary for collection. Urban county government containers, other receptacles for trash and ashes and any other waste subject to collection by LFUCG shall be placed at the curb no sooner than 4:00 p.m. on the evening prior to collection and no later than 5:00 a.m. on the day of collection. Urban county government containers and other receptacles shall be removed from the curb no later than 7:00 p.m. in the evening on the day of collection. When not at the curb for collection, roll carts and other approved receptacles shall be kept in the rear yard or side yard. Nonwoody yard waste must be contained in approved yard waste containers and must not be placed in any other type container. Approved yard waste containers must not contain material other than yard waste.

(c) When a violation of subsection (b) has occurred the director, division of waste management, or his designee shall affix a notice of violation to the front door of the residence or structure or to the roll cart container and serve upon the property owner, by personal service or by regular mail to the last known address of the owner of the property as it appears on the current tax assessment roll, or to the owner's designee and to the occupant(s) if readily determinable, a notice describing the violation and listing the date and time of the violation and informing the property owner or his designee and the occupant(s) that a civil fine pursuant to article XII may be assessed if the violation continues or two (2) or more notices of violation have previously been issued to the same owner on the same property within a twelve-month period.

(d) An additional citation is authorized to be issued for each further violation of the same nature occurring in any twelve-month period, subject to any pending appeal of a previously issued citation. For the purposes of this section the term "responsible party" shall mean the occupant, if readily determinable in accordance with subsection (f). However, in the event that the occupant is not readily determinable, or in the event that the occupant has previously been issued a citation for a violation of this section within the past twelve (12) months and has failed to timely pay the corresponding civil fine or successfully appeal the citation, the citation shall be issued to the property owner.

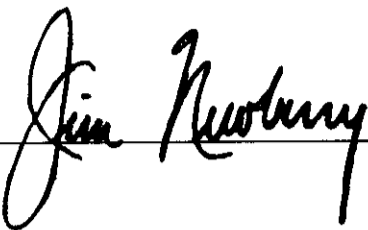
(e) A property owner may provide written notice to the director of waste management with the name, address, and phone number of a management company or other designated representative with authority over the subject property to which notices shall be issued pursuant to the provisions of this article II.

(f) Occupant(s) shall be primarily responsible for compliance with the requirements of this section and shall be deemed readily determinable when listed as the party responsible for payment of the solid waste disposal fee at a property or when currently designated by the property owner on a form provided by and filed with the commissioner of environmental quality.

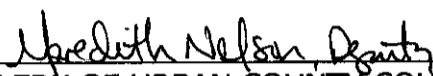
(g) It shall be a defense for a property owner for alleged violations of this section if the readily determinable occupant(s) have vacated the property or the owner has instituted an eviction proceeding against the occupant(s) within thirty (30) days of the third notice of violation and completed the eviction within sixty (60) days of the commencement of the proceeding or as soon as court procedures will allow. It shall be the responsibility of the property owner to provide, in writing, proof of the initiation of eviction proceedings and such other proof necessary to establish this defense.

Section 6 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: July 1, 2010

  
MAYOR

ATTEST:

  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: July 8, 2010-lt

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